IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.168 OF 2007

In

SUIT NO.118 OF 2007

M.D. Choksey Construction Company Pvt. Ltd. : Plaintiff

V/s.

Pravin M. Shah & Ors. : Defendants

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Mr.Anuj Narula i/b. M/s.Jhangiani, Narula & Associates for the plaintiff.

Ms Smita G. for defendant nos.1 & 2.

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CORAM : S.A.BOBDE, J.

DATE : FEBRUARY 7, 2007.

P.C.

1. By this Notice of Motion, the plaintiff prays, inter alia, for appointment of the Court Receiver in respect of a tenement admeasuring 275 sq. ft. on the ground floor of the chawl standing on the eastern side in the compound of the building known as "Sohni Mansion", situate at Gowalia Tank, A.K. Marg, Mumbai. There is some dispute about the place as to whether the tenement is located is in a chawl or the main building. However, the learned

counsel for the defendants submits that the tenement in question is shown as the suit premises in exh.‘1’ colly. The tenement appears like a garage in the photograph. The learned counsel for the plaintiff submits that in respect of the tenement in question, the Receiver was appointed by this court who was incharge from 12.6.1985 to 18.10.2000. Therefore, it is obvious that the statement on behalf of the defendants made in the letter dated 10.8.2002 to the Commissioner of Police that they were put in possession of the godown on 27.10.1999 clearly indicates that the defendants were inducted when the Receiver was incharge of the premises. In fact, the report submitted to the Receiver by the owners at exh.‘B’ does not contain the names of the defendants as tenants. In view of the aforesaid document of the Receiver and the letter written to the Commissioner of Police on behalf of the defendants, it is difficult to accept the genuineness of the receipt at exh.‘II-A’ dated 10.3.1983 produced by the defendants along with the affidavit-in-reply dated 7.2.2007. In these circumstances, since prima facie the defendants appear to have entered into occupation when the Receiver was incharge of the property and are unable to point out that the occupation is under a valid authority of the owners, I am of view that this is a fit case for appointment of the Receiver.

2. Accordingly, the Notice of Motion is allowed in terms of prayer clause (a), except the bracketed portion. The Receiver shall appoint the defendant as agent on such terms and conditions as are considered appropriate. Order accordingly.

3. Until the Receiver takes charge, there shall be an injunction terms of prayer clause (b), except the bracketed portion.

S.A. BOBDE, J.